



# Town Council Agenda Report

**SUBJECT:** Ordinance

**CONTACT PERSON/NUMBER:** Chris Kovanes, 797-1102

**TITLE OF AGENDA ITEM:** AN ORDINANCE OF THE TOWN OF DAVIE, FLORIDA ASSESSING A FEE ON TELECOMMUNICATIONS COMPANIES THAT OCCUPY MUNICIPAL RIGHTS-OF-WAY FOR TELECOMMUNICATIONS FACILITIES; PROVIDING FOR WHEN PAYMENTS ARE DUE; PROVIDING FOR INTEREST; PROVIDING FOR REVIEW OF RECORDS; PROVIDING A SAVINGS CLAUSE; PROVIDING AN EFFECTIVE DATE.

**REPORT IN BRIEF:** This Ordinance is the first part of a lock-step process in which the Town of Davie adheres to the Florida Communications Services Tax Simplification Law, which will be in effect October 1, 2001. The first step to reaching compliance of the Law is to establish an Ordinance that clearly states all new telecommunication companies (which do not all really have a franchise agreement with the Town) seeking to utilize the Town of Davie rights-of-way, engage with one set agreement based upon the pending Ordinance. The Town in the past had the flexibility to create individual agreements as seen fit for each telecommunication company. The Florida League of Cities has been cooperative with sharing information and communicated they would be drafting a model Ordinance for the cities to adopt, however, in short notice the League transmitted a model Ordinance for the Town to adopt as soon as possible. Town Attorney Monroe Kiar, obtained this model Ordinance and prepared an appropriate Ordinance for the Town to act upon accordingly.

This Ordinance is to establish fees for occupation of the Town's rights-of-way for telecommunication facilities of telecommunication companies not otherwise paying a fee to the Town for occupation of the Town's rights-of-way. The Ordinance clearly states any telecommunications facilities as of the effective date of this Ordinance shall continue to pay fees to the Town as the company has been paying.

Again, this is an only interim Ordinance for telecommunication companies to use the rights-of-way of the Town. The terms include: a fee in the amount of one percent (1%) of the gross receipts on recurring local services revenues for services provided within the corporate limits of the Town by such telecommunications company; and, the company shall pay the Town \$500 per linear mile. This Ordinance will be replaced upon adoption of a permanent Ordinance adhering to the Florida Communication Services Tax Simplification Law by the Town of Davie, October 1, 2001.

The Communication Services Tax Simplification Law adopted by the Florida Legislature in the 2000 Regular Session contains provisions for requiring right-of-way regulations by January 1, 2001. These new regulations are going to be very restrictive in terms of a maximum permit fee of \$100.00 or most likely no fee for permits to use the right-of-way (if a fee is charged then the taxes received by a municipality will be significantly reduced). This Ordinance enables new telecommunication companies to construct their system prior to October 1, 2001.

**PREVIOUS ACTIONS:** Not Applicable

**CONCURRENCES:** Not Applicable

**FISCAL IMPACT:** The Town will receive one percent (1%) of the gross receipt on recurring local services revenue for services provided within the corporate limits of the Town, and \$500 as a one time annual fee.

**RECOMMENDATION(S):** Motion to approve the Ordinance.

**Attachment(s):** Ordinance and Memorandum from Monroe Kiar dated December 13, 2000.

## ORDINANCE NO.

AN ORDINANCE OF THE TOWN OF DAVIE, FLORIDA ASSESSING A FEE ON TELECOMMUNICATIONS COMPANIES THAT OCCUPY MUNICIPAL RIGHTS-OF-WAY FOR TELECOMMUNICATIONS FACILITIES; PROVIDING FOR WHEN PAYMENTS ARE DUE; PROVIDING FOR INTEREST; PROVIDING FOR REVIEW OF RECORDS; PROVIDING A SAVINGS CLAUSE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 337.401, Florida Statutes (2000), references fees or other consideration which municipalities may require from telecommunications companies to occupy municipal rights-of-way for telecommunications facilities; and

WHEREAS, it is the Town's intent to establish fees for occupation of the Town's rights-of-way for telecommunications facilities of companies not otherwise paying a fee to the Town for occupation of the Town's rights-of-ways; and

WHEREAS, it is the Town's intention that any telecommunications company paying fees for the occupation of the Town's rights-of-way for telecommunications facilities as of the effective date of this Ordinance shall continue to pay fees to the City as the company has been paying them and that any other telecommunications company occupying the Town's rights-of-ways for telecommunications facilities pay the fees for occupation set forth in this Ordinance.

NOW, THEREFORE, IT IS ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA, AS FOLLOWS:

SECTION 1. Purpose and Application. The purpose of this Ordinance is to establish fees for occupation of the Town's rights-of-way for telecommunication facilities of telecommunications companies not otherwise paying a fee to the Town for occupation of the Town's rights-of-way. Any telecommunications facilities as of the effective date of this Ordinance shall continue to pay fees to the Town as the company has been paying them.

The fees imposed pursuant to this Ordinance shall apply to all telecommunications companies occupying the Town's rights-of-way for telecommunications facilities and not otherwise paying a fee to the Town for occupation of the Town's rights-of-way.

The fees imposed pursuant to this Ordinance are a fee and not a tax as specified in Section 337.401, Florida Statutes (2000); consequently (1) the payments to be made pursuant to this Ordinance shall not be deemed to be in the nature of a tax; (2) such payments shall be in

addition to any and all taxes of a general applicability; and (3) the fee specified herein is consideration for occupation of the Town's rights-of-ways, including all public easements, for the purpose of erecting, constructing and maintaining telecommunications systems.

SECTION 2. Fee for telecommunications company occupation of rights-of-way.

- a. (i) Any telecommunications company providing local telephone service, as defined in Section 203.012(3), Florida Statutes (2000), in the Town and that is occupying municipal streets or rights-of-way within the corporate limits of the Town's poles, wires or other fixtures shall pay to the Town a fee in the amount of one percent (1%) of the gross receipts on recurring local services revenues for services provided within the corporate limits of the Town by such telecommunications company. Included within the fee are all taxes, licenses, fees, in-kind contributions accepted pursuant to Section 337.401, Florida Statutes (2000), and other impositions except ad valorem taxes and amounts for assessments for special benefits, such as sidewalks, street pavings, and similar improvements, and occupational license taxes levied or imposed by the Town upon the telecommunications company.

(ii) In the event that a telecommunications company which provides telecommunications services defined as toll services in Section 203.012(7) Florida Statutes (2000), occupies the Town's rights-of-way, the telecommunications company shall pay to the Town annually [Five Hundred Dollars (\$500)] per linear mile, which amount is prorated for any portion thereof, for any cable, fiber optic, or other pathway that makes physical use of the Town's rights-of-way. Such annual fee shall be prorated to reflect the expiration date of this Ordinance and shall be payable annually, in advance. If a telecommunications company that is required to pay a fee pursuant to this subparagraph (a) (ii) increases the amount of its facilities occupying the Town's rights-of-way after such advance payment has been made, but prior to the expiration date of this Ordinance, the fees due for additional facilities shall be prorated and paid in full at the time the facilities are installed in the Town's rights-of-way.

The fee or other consideration imposed pursuant to this subsection (ii) shall not apply in any manner to any telecommunications company which provides local telephone services as defined in Section 203.012(3), Florida Statutes (2000), for any services provided by such telecommunications company.

(iii) Telecommunications company, as used in this Ordinance, shall have the meaning set forth in Section 364.02(12), Florida Statutes (2000).

- b. The fees provided for in subsection (a)(i) shall be paid by the telecommunications company shall be paid to the Town in quarterly installments. The installment payments shall be based upon such gross receipts on recurring local service revenues for the immediately preceding installment period or portion thereof after the effective date of this Ordinance, and shall be made within 30 calendar days following the end of the period. Past due payments or underpayments shall bear interest accrued from the last day of the quarter for which the payment was due. Interest shall be paid at the Florida statutory rate of interest on judgments as established by Section 55.03, Florida Statutes (2000). Payments shall include a statement as to how the fee amount

was determined and the statement shall be certified by the telecommunications company's chief financial officer or other duly authorized representative of the company.

- c. If the Town wishes to verify the payments due to the Town under this section, the telecommunications company shall permit the Town or a designated representative of the Town, upon reasonable advanced written notice, and during the normal business hours at the location of the telecommunications company where such records are maintained in the Town, at another location satisfactory to the Town, or elsewhere pursuant to (i) or (ii) below, to review or audit the telecommunications company's billing and payment records kept in the ordinary course of business upon which the payments were based. If a telecommunications company's records are not maintained in the Town, the telecommunications company shall either:

- (i) pay all reasonable expenses, including travel, following the provisions of subsections 112.061 (6), (7) and (8), Florida Statutes (2000), to the Town for the Town to have a review or audit performed; or

- (ii) provide the Town with access to copies of the telecommunications company's records in the Town or within 55 miles of the Town or by an electronic method satisfactory to the Town.

However, without the specific written consent of a telecommunications company's audit representative, no company records may be duplicated or taken from the telecommunications company's premises, and the Town shall maintain the confidentiality of the information disclosed in the records and use the information solely for the purposes of verifying payments by the telecommunications company. No acceptance of payments shall be construed as a release or as an accord and satisfaction of any claim the Town may have for sums due and payable under this Ordinance unless the Town agrees in writing. In the event that the Town, pursuant to a final audit findings, determines that there exists a difference between the amount due to the Town and the amount paid to the Town, indicating an underpayment to the Town, in excess of five percent (5%) of the amount due, such telecommunications company shall pay all reasonable costs, fees and expenses of the audit.

- d. This Ordinance is adopted consistent with the provisions of Section 337.401, Florida Statutes (2000), and other applicable provisions of law. This section shall not be construed as a waiver or limitation of the power of the Town to prescribe and enforce reasonable rules and regulations pursuant to applicable provisions of law.
- e. If required by applicable Town ordinances, codes or regulations, a telecommunications company shall be registered with the Town and obtain all permits that may be required by the Town regarding occupation of the Town's public rights-of-way for telecommunications facilities.

SECTION 3. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall, for any reason, be held to be invalid or unconstitutional, such decision shall not effect the validity of the remaining

sections, sentences, clauses, and phrases of this Ordinance but shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

SECTION 4. The effective date of this Ordinance shall be immediately upon its passage by the Town Council. This Ordinance shall no longer be of effect as of October 1, 2001.

PASSED ON FIRST READING THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2000

PASSED ON SECOND READING THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2001

\_\_\_\_\_  
MAYOR/COUNCILMEMBER

ATTEST:

\_\_\_\_\_  
Town Clerk

APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2001.


MONROE D. KIAR  
TOWN ATTORNEY  
TOWN OF DAVIE  
6191 SW 45th Street, Suite 6151A  
Davie, Florida 33314  
Telephone (954) 584-9770

MEMORANDUM

DATE: December 13, 2000

TO: Barbara McDaniel, Town Clerk

COPIES TO: Mayor and Councilmembers  
Tom Willi, Town Administrator  
Christopher Kovanes

FROM: Monroe D. Kiar 

RE: Control No. 001203  
Telecommunications Ordinance

Request: That the attached Telecommunications Ordinance be noticed for public hearing as soon as possible. I request that Barbara McDaniel contact me so that we can discuss timing in order to get this Ordinance passed before January 1, 2001.

Discussion:

The meeting concerning the new telecommunications law, which was held in Orlando yesterday (December 12, 2000), was not particularly insightful, except for the presentation by the counsel for the League of Cities. The information obtained from him was very important, and made attending the meeting worthwhile. I contacted him today, and obtained a model ordinance concerning telecommunications, and have prepared an Ordinance for the Town so that the Town can maintain its ability to impose fees on new telecommunications companies.<sup>1</sup> I request the Town adopt this Ordinance

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<sup>1</sup>Apparently, few municipalities have as yet passed such an Ordinance.

before January 1, 2001<sup>2</sup> in order to maintain the ability to impose fees on new telecommunications companies. If the Ordinance is not passed before January 1, 2001, then in addition to any other notice requirements, there is an additional notice requirement of advising the Secretary of State with notice at least 10 days prior to consideration on first reading, among other requirements.

This is a source of revenue for the Town.

I attach a copy of this Ordinance and request that it be published so that the first reading can be made as soon as possible. Thank you.

If you have any further questions, please feel free to contact me.

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<sup>2</sup>I request that Barbara McDaniel contact me so that we can discuss timing in order to get this Ordinance passed before January 1, 2000.